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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUN 1 2 2000

In the Matter of:)
)
Auction of Licenses in the 747-762 and) DA 00-1075
777-792 MHz Bands Scheduled for)
September 6, 2000)

**JOINT REPLY COMMENTS OF SBC WIRELESS, INC.
AND BELL SOUTH CELLULAR CORP.**

These Joint Reply Comments are filed by SBC Wireless, Inc. and BellSouth Cellular Corp. ("Joint Commenting Parties") in response to comments filed in this proceeding regarding the Commission's proposal to modify the simultaneous multiple round auction design of Auction No. 31 to allow combinatorial (package) bidding. For the reasons set forth below, the Joint Commenting Parties believe the Commission should adopt the rows/columns/global combinatorial bidding model they propose for Auction No. 31 and should resolve the clearance issues regarding incumbent broadcasters.

Eleven comments were filed. The majority of comments support the concept of combinatorial bidding where, as here, it is likely that the bidders perceive strong synergies among the licenses being auctioned.¹ Verizon Wireless ("Verizon") and Voicestream Wireless Corporation ("Voicestream") individually oppose the application of combinatorial bidding to Auction No. 31.

¹ Kelly and Steinberg p. 1; Nextel 1-3; Pekec and Rothkopf, p. 2; Salant, p. 1; Spectrum Exchange, pp. 3-4; Plott and Salmon, p. 1; Joint Comments of SBC Wireless, Inc. and BellSouth Cellular Corp. ("SBC/BellSouth Joint Comments"), p. 1.

The Joint Commenting Parties supported the Commission's proposal and provided a comprehensive and inter-related set of changes the Commission needs to make in its proposed rules for combinatorial bidding to ensure the success of Auction No. 31. The details of those changes are set out in an attachment to the SBC/BellSouth Joint Comments.² After reviewing the comments in this proceeding, the Joint Commenting Parties still recommend the adoption of their proposals as set forth in the Blueprint Attachment to their Joint Comments, and they address here several items raised in the comments that warrant Commission attention.

Spectrum clearance is critical to the success of Auction No. 31. The Joint Commenting Parties demonstrated that there is a powerful interrelationship between the success of Auction No. 31 and the need to clear incumbent broadcasters from the spectrum being auctioned.³ Failure to address the clearance issue will retard the license values in Auction No. 31 because rational bidders will reduce their valuation of licenses by nearly a worst-case scenario estimate of the post-auction costs of clearing the spectrum.⁴ It will also further delay the delivery of new and innovative wireless products and services. Both Spectrum Exchange Group, LLC ("Spectrum Exchange") and Dr. David J. Salant recognize the compelling need to resolve the clearance issue so that bidders can more rationally value the licenses being auctioned.⁵ Thus, the Joint

² SBC/BellSouth Joint Comments, Attachment, "A Blueprint for a Multi-Round Auction with Package Bidding", by Professor Ronald M. Harstad, Professor of Economics of Rutgers University ("Blueprint Attachment").

³ SBC/BellSouth Joint Comments, pp. 1-2; SBC/BellSouth Joint Comments, Blueprint Attachment, pp. 4-7.

⁴ SBC/BellSouth Joint Comments, Blueprint Attachment, pp. 4-7.

⁵ Spectrum Exchange, p. 8; Salant, pp. 3-4.

Commenting Parties asked the Commission to adopt a "must move for compensation equal to relocation costs" doctrine.⁶

The Commission can and ought to adopt its package bidding proposal with modifications. The comments offer no basis for the Commission to abandon its proposal to adopt combinatorial bidding for Auction No. 31. Contrary to the assertions of Verizon⁷ and Voicestream,⁸ combinatorial bidding is not too complex to understand or evaluate in the time allowed.

The SBC/BellSouth Joint Comments, and those of others,⁹ demonstrate that the rules for a combinatorial auction based on a rows/columns/global bidding structure can be simple to adopt, understand and administer. Moreover, such an auction would allow the Commission to capture the economic synergies of either the national or regional license combinations, if the market determines that those synergies exist.¹⁰ An auction without packaging would needlessly forego the opportunity of letting the market make such a determination.

Contrary to the claims of some,¹¹ there have been sufficient changes in circumstances since January, 2000 to warrant the Commission's adoption of combinatorial bidding in Auction No. 31. The passage of time since the Commission's earlier decision not to adopt combinatorial bidding has given the Commission the chance to give more thought to the issues raised by combinatorial bidding and to solicit and

⁶ SBC/BellSouth Joint Comments, p. 2.

⁷ Verizon, pp. 1-2.

⁸ Voicestream, p. 4,

⁹ *E.g.*, Spectrum Exchange, Pekec and Rothkopf.

¹⁰ Nextel, p. 3; Pekec and Rothkopf, p. 2, item 1; Plott and Salmon, p. 1; Salant, p. 1; Spectrum Exchange, pp. 3-5.

¹¹ Verizon, p. 2-3

obtain input from auction theorists. The Commission has taken advantage of that opportunity.

A significant conference was conducted by the Commission in May at which most of the notable experts on theory and behavior in auctions presented papers and discussed the relative benefits of this type of auction (the Wye Woods Conference, May 7, 2000).¹² Over a dozen Commission representatives attended the conference and were able to listen to the presentations and discuss these issues with those experts.

Further, the Commission now has had the benefit of access to additional information that has been submitted in the comments and reply comments in the instant proceeding. In light of the Commission's decision to delay Auction No. 31, one of the major reasons for earlier rejecting combinatorial bidding has been eliminated.

Combinatorial bidding also does not "severely disadvantage" all but the largest companies, as Voicestream contends.¹³ First, Voicestream offers no evidence to support this contention. Second, while the Commission's proposal allows for national bidding packages, there is no way of knowing whether the synergies of a national license are dominant. As Spectrum Exchange noted, if the synergies were known, then solely national licenses could be sold--a combinatorial auction would not be needed.¹⁴ If it turns out that a bidder values the national license more than all other bidders value smaller combinations, then the Commission has only facilitated (but not predestined) the market's decision. By contrast to the inclusive effect of combinatorial bidding, Voicestream would have the Commission exclude some of the most likely synergies from

¹² Cf., <http://combin.fcc.gov>.

¹³ Voicestream, p. 4.

¹⁴ Spectrum Exchange, p. 5.

being developed in the auction. Such exclusionary policies are not required by the Communications Act of 1934, as amended, (the "Act") and are not good public policy.

Nothing in the statute prevents the Commission from using combinatorial bidding at this time. While the Act directs the Commission to design and conduct a test of combinatorial bidding,¹⁵ it does not bar the Commission from conducting such a test in an actual auction. Nor does the Act bar the Commission from using combinatorial bidding while it is conducting the test required by the statute.¹⁶ Moreover, the provision of the Act cited by Verizon simply does not restrict the Commission from using combinatorial bidding in Auction No. 31 or any other auction.

The Commission should adopt its rows/columns/global bidding proposal. It should also reject proposals that would allow bidders to create, and bid on, any package they choose.¹⁷

Auction No. 31 will be the Commission's first use of combinatorial bidding and will be most bidders' first experience with this type of bidding, too. The Joint Commenting Parties believe that the rows, columns, and global proposal, as proposed by the Commission and reinforced in the Blueprint, is a reasonable balance among 1) the need to conduct the auction as soon as practicable, 2) the ability of bidders to deal with the complexities of this level of combinatorial bidding, and 3) the desire to capture the value of at least the most likely synergies in this auction. The row/column/global auction

¹⁵ Verizon asserts that the "[u]se of combinatorial bidding in an actual auction without prior testing also appears to conflict with Section 309(j)(3) of the 1934 Communications Act". Verizon, p. 3, n. 2.

¹⁶ Perhaps, Congress' thought in enacting the changes to Section 309(j)(3) of the Act was nothing more than a nudge to the Commission to try this form of auction.

¹⁷ Salant, pp. 4-6; Verizon, p. 6-7.

structure captures the most obvious and the most likely synergies while maintaining a simple, understandable and executable auction.

Nextel Communications, Inc. ("Nextel") notes that expanding the number of packages could "add excessive complexity to the auction," especially in this case--the Commission's initial use of combinatorial bidding.¹⁸ Spectrum Exchange agrees that the use of nine packages in this auction would be acceptable, as there is considerable information known about the synergies in this case and this is the Commission's first use of this type of auction.¹⁹

Quite simply, given the limited numbers of licenses to be auctioned, there is no basis for claiming that there are other synergies than those identified by the Commission. As Dr. Salant points out,²⁰ there are some 4095 possible combinations given the EAG structure adopted by the Commission. Not only would an auction with that many combinations be needlessly complex, it is absurd to argue that one or more bidders will find synergies in even a miniscule number of those additional combinations.

When this complexity factor is added to the existing uncertainties surrounding the clearance issues, it is highly unlikely that combinations other than those captured by a rows/columns/global model will produce sufficient synergies to justify the additional complexities they would impose on the auction.

The Commission must adopt stringent default penalties. A single default in the case of package bidding can change the outcome of all other winning bids.

¹⁸ Nextel, p. 3.

¹⁹ Spectrum Exchange, p. 6.

²⁰ Salant, p. 5.

Moreover, there is no good solution after default. Accordingly, the SBC/BellSouth Joint Comments proposed a series of rules designed to prevent defaults.²¹

Pekec and Rothkopf concur that "[d]efault in a combinatorial auction has more far reaching consequences than does default in an auction of single items. In particular, a default in a combinatorial auction could affect the award of many other licenses and be used strategically to do so."²² The Joint Commenting Parties identify a scenario in which a defaulter purposely defaults to cause all licenses to end up in the wrong hands.²³

While Pekec and Rothkopf recognize this risk, they attempt to cure it by increasing post-auction penalties to the defaulting bidder. Similarly, Verizon proposes a default penalty²⁴ that simply is inadequate to deter defaults, especially where the impact of a default on the auction would be so pervasive and where there are strategic reasons for a bidder to utilize a default strategy to disrupt the plans of other bidders who are or would become its competitors in the wireless market.

The Joint Commenting Parties believe their proposal is more comprehensive and will send a stronger message to bidders that defaulting will not be tolerated and will be dealt with severely and quickly. The Joint Commenting Parties also propose that, in case of default, the Commission should "re-wind" the auction to the last place it is clear that the defaulter began manipulating the results.²⁵

The Commission should adopt the stopping and auction pacing rules proposed by SBC and BellSouth. The SBC/BellSouth Joint Comments demonstrate that the Commission should adjust its stopping rule for two reasons. First, under the

²¹ SBC/BellSouth Joint Comments, p. 3, Blueprint Attachment, pp. 36-40.

²² Pekec and Rothkopf, p. 6, item 6.

²³ SBC/BellSouth Joint Comments, Blueprint Attachment at 38.

²⁴ Verizon, p. 11.

Commission's proposal, a round with no new bids could suddenly signal that the next round is a bidder's last chance to compete. With package bidding, bidders may be faced with the question of whether to raise a single bid by billions of dollars, and they may only have a very short time in which to come up with an answer. The bidders will need to consult upper levels of management in making those, and similar, decisions. Accordingly, as part of their comprehensive proposal, the SBC/BellSouth Joint Comments suggest that the Commission suspend the remaining rounds on any day until 10:00 AM the next day under two situations: 1) if there is a round with no new bids; or, 2) if a round ends with revenue of \$1 billion or higher than at the beginning of that day.²⁶

Pekec and Rothkopf recognize the need for bidders to consult upper level management. Specifically, they ask the Commission to "announce in advance that no new auction rounds will begin on any day in which the total of the provisionally winning bids has increased by [\$1B] or more."²⁷

The Commission should allow non-provisionally winning bids to be withdrawn and replaced. The Joint Commenting Parties provided logical, straightforward rules for when the FCC will retain bids, and, conversely, discard bids.²⁸ Comments addressing bid retention are consistent with this proposal as to which actions on bids occur automatically (indeed, the SBC/BellSouth proposal should assuage the concerns of potential bidders).

In contrast, bid withdrawals are voluntary actions by bidders. The Joint Commenting Parties propose to permit a bidder to withdraw any bid on an individual

²⁵ SBC/BellSouth Joint Comments, p. 3, Blueprint Attachment, p. 39-40.

²⁶ SBC/BellSouth Joint Comments, p. 4, Blueprint Attachment, pp. 27-31.

²⁷ Pekec and Rothkopf, p. 10, item 11.

²⁸ SBC/BellSouth Joint Comments, Blueprint Attachment.

license that is not provisionally winning, so long as the bidder transfers that activity to new bids in that same round. Most comments mentioning bid withdrawals are supportive of this or similar notions, especially the detailed comments of Pekec and Rothkopf. Professor Charles Plott and Dr. Tim Salmon would allow the same withdrawals but not require any replacement by new bid submissions; the rationale for a withdrawal is less and the potential for signaling is greater if no replacement bid is required.

Verizon asks the Commission to allow withdrawals of bids that are provisionally winning bids,²⁹ and Verizon would subject withdrawing bidders to the same withdrawal penalty as in prior auctions. The Joint Commenting Parties believe this proposal is flawed given its implications under package bidding.

First, a withdrawal of a provisionally winning bid presents many of the complications that follow a default.³⁰ That is, every license can change hands if provisional winners are recalculated following the withdrawal of a provisionally winning bid for an individual license or a package. Second, the amount of a withdrawal penalty under the prior rule is not necessarily determined by the auction. For example, a bid on the SE-20 license could be provisionally winning; if it was withdrawn, the 20's row bid could become provisionally winning. If the 20's row bid remained provisionally winning for the rest of the auction, the SE-20 license would never be priced, and it would be unclear how much the withdrawal had cost the Commission.

The Joint Commenting Parties believe that it is in the public interest to allow some withdrawals, and that their proposed rule isolates those withdrawals that bidders

²⁹ Verizon, p. 7.

³⁰ SBC/BellSouth Joint Comments, Blueprint Attachment, pp. 37-41.

might legitimately need, while preventing potentially injurious or mischievous withdrawals.

CONCLUSION

For the reasons set forth above, the Commission should adopt a rows/columns/global combinatorial bidding model using the inter-related rules and default rules proposed by the Joint Commenting Parties. It should also adopt rules: 1) requiring incumbent broadcasters to relocate to other spectrum and 2) obligating winning bidders to compensate incumbent broadcasters for their relocation costs.

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CERTIFICATE OF SERVICE

I do hereby certify that I have this 16th day of June 2000 served the following parties to this action with a copy of the foregoing JOINT REPLY COMMENTS OF SBC WIRELESS, INC. AND BELLSOUTH CELLULAR CORP. by hand delivery or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed on the attached service list.

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